

STATE OF MINNESOTA  
IN SUPREME COURT  
ADM10-8046

**FILED**

January 2, 2015

**OFFICE OF  
APPELLATE COURTS**

**ORDER REGARDING PROPOSED AMENDMENTS TO  
THE RULES OF PROCEDURE GOVERNING PROCEEDINGS  
UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACT**

The Minnesota Supreme Court Advisory Committee on the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act has recommended amendments to those Rules to accommodate the judicial branch's increasing use of electronic filing and electronic service. The Committee's report with the proposed amendments to the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act is attached to this order. The Committee's report and summaries of its 2014 meetings can also be accessed on P-MACS, the public access site for the Minnesota appellate courts, under case number: ADM10-8046 *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act* (filed Dec. 23, 2014). Other than proposed amendments that may relate to public access to judicial branch records, the court will consider the proposed amendments to the Minnesota Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act based on written comments only.

IT IS HEREBY ORDERED THAT:

1. Any person or organization wishing to provide written comments in support of or opposition to the proposed amendments shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. The written comments shall be filed so as to be received no later than March 2, 2015.

2. The court will consider issues related to public access to judicial branch records that might be presented by the amendments recommended by the Advisory Committee on the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act, if any, in the proceedings for the Rules on Public Access to Records of the Judicial Branch, ADM10-8050. A copy of the order filed in ADM10-8050 is attached to this order. Requests to make a presentation at the hearing scheduled on March 17, 2015, in ADM10-8050, as allowed by paragraph 3 of that order, must identify the specific amendment proposed to the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act that raises an issue related to public access to judicial branch records.

Dated: January 2, 2015

BY THE COURT:

A handwritten signature in black ink, appearing to read "C. Dietzen", is written over a horizontal line.

Christopher J. Dietzen  
Associate Justice

**STATE OF MINNESOTA**  
**IN SUPREME COURT**  
ADM10-8046

**In re:**

**Supreme Court Advisory Committee  
on the Rules of Procedure Governing Proceedings  
Under the Minnesota Commitment and Treatment Act**

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**Recommendations of Minnesota Supreme Court  
Advisory Committee on the Rules of Procedure Governing Proceedings  
Under the Minnesota Commitment and Treatment Act**

**Final Report**

**December 23, 2014**

**Hon. Jamie L. Anderson, Minneapolis  
Chair**

**Hon. G. Barry Anderson, Saint Paul  
Supreme Court Liaison**

**Robin C. Benson, Saint Paul, Minnesota  
Donald Betzold, Fridley, Minnesota  
Jennifer Dunn-Foster, Owatonna, Minnesota  
Matthew Frank, Saint Paul, Minnesota  
Hon. Stoney Hiljus, Mora, Minnesota  
John L. Kirwin, Minneapolis, Minnesota  
Ryan B. Magnus, Mankato, Minnesota  
Douglas F. McGuire, Richfield, Minnesota  
Katie Nolting, Bemidji, Minnesota  
Joel C. Olson, Saint Paul, Minnesota  
James C. Snyder, Saint Paul, Minnesota  
James C. Zuleger, Stillwater, Minnesota  
Rita Coyle DeMeules, Saint Paul, Minnesota  
Cynthia L. Lehr, Saint Paul, Minnesota**

**Deanna J. Dohrmann, Saint Paul  
Staff Attorney**

## **Introduction**

The advisory committee met five times in 2014 to address how the expansion of electronic filing and service is likely to affect the rules that govern civil commitment proceedings under Minnesota Statutes chapters 253B and 253D. In particular, the committee focused on the impact of allowing broader access to civil commitment case records over the Internet (remote access) and reconsidered the public access classification of civil commitment proceedings involving minor respondents. The other area that received heavy discussion concerned the treatment of medical records. In anticipation of the commencement of a pilot project allowing for the electronic transfer of medical records from health care and medical records providers to the court, the committee recommends new rules governing the transfer and review of medical records in civil commitment proceedings.

The committee is generally charged with reviewing the rules for amendments that will support the expansion of an e-Court environment and to report on those changes by December 31, 2014. The civil commitment rules have not been comprehensively reviewed by the full advisory committee since the advisory committee was last convened in 1999. In order to allow for a more in-depth review of the rules, the committee members' terms will extend beyond the report deadline for further consideration and recommendations of additional amendments to the Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Acts.

This report contains two recommendations for substantive rule changes and nine recommendations for non-substantive changes. The expansion of an e-Court environment requires updating the language used in rules that address how documents are treated in an electronic environment. To avoid confusion regarding service requirements, the advisory committee recommends adding language to the rules addressing both conventional methods of service and electronic transmission (rules 3, 8, 12). Other minor amendments include using consistent statutory terminology by replacing the term "patient" with "respondent" (rules 8 and 14), removing redundant language regarding service on the respondent (rule 8), and conforming to legislative changes (rules 6 and 23).

The General Rules of Practice set forth specific e-Filing and e-Service requirements. To ensure court users are aware of the requirements, the committee recommends amending the rules to provide a cross-reference to Rule 14 of the General Rules of Practice. The civil commitment rules contain a specific rule on public access, and the committee recommends that Rule 21 be amended to highlight restrictions on public access to medical records and records relating to the commitment of minors. The comments provide a cross-reference to the Rules of Public Access to Records of the Judicial Branch.

## **Effective Date**

The committee believes that any rule amendments related to electronic filing and service can be made effective as of July 1, 2015. This would allow time for a public hearing or notice-and-comment period, while providing sufficient advance notice to the bench and bar and time to make necessary adjustments to various court forms. The committee understands that there may

76 be some issues relating to resources or technology that may influence the effective date,  
77 especially with respect to public access issues.  
78

79 **Style of Report**  
80

81 Recommendations as to existing rules are depicted in traditional legislative format,  
82 underscoring to indicate new language and ~~lined through~~ to show deletions. Markings are  
83 omitted for the new advisory committee comments, regardless of their derivation.  
84

85  
86 Respectfully submitted,  
87

88 MINNESOTA SUPREME COURT  
89 ADVISORY COMMITTEE ON SPECIAL  
90 RULES OF PROCEDURE GOVERNING  
91 PROCEDURES UNDER THE  
92 MINNESOTA COMMITMENT AND  
93 TREATMENT ACTS  
94

**Recommendation 1:**        **The Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Acts should be amended to facilitate the expanded use of E-Filing and E-Service in civil commitment cases, and to provide for non-substantive changes.**

## **Introduction**

These recommended amendments address several rules, all affected by e-filing or e-service issues, non-substantive changes, formatting changes for clarity, and conformity to legislative changes.

## **Specific Recommendation**

Rules 3, 6, 8, 10, 12, 14, 18, 19, and 23 should be amended as follows:

### **SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE MINNESOTA COMMITMENT AND TREATMENT ACT**

\* \* \*

#### **Rule 3. Service and Filing; Signing of Documents**

Whenever a person is required to give or serve any document under this chapter to any party, attorney, or entity other than the court, service shall ~~may~~ be made in a any manner provided allowed under the Minnesota Rules of Civil Procedure and the Minnesota General Rules of Practice. Attorneys for both parties must also be served whether or not service upon counsel is specifically required by statute.

Where electronic filing is authorized or required under Minnesota Rules of General Practice 14, documents shall be filed in accordance with that rule.

Notwithstanding Minn. Stat. § 253B.23, subd. 3a, a signature on an electronic document filed in a proceeding subject to these rules is valid if it complies with General Rules of Practice 14.04.

\* \* \*

#### **Rule 6. Commencement**

A proceeding for commitment or early intervention is commenced upon filing a petition with the District Court pursuant to Minn. Stat. ch. 253B or Minn. Stat. ch. 253D.

140       ~~The petition should be filed in the county of financial responsibility as defined in Minn.~~  
141 ~~Stat., section 253B.045, subdivision 2. If the county of financial responsibility refuses to file a~~  
142 ~~petition, the county where the respondent is present must file the petition if statutory conditions~~  
143 ~~for commitment are present. Financial responsibility for the costs of the proceedings and~~  
144 ~~treatment will be resolved by subsequent administrative process.~~

145  
146                   **Advisory Committee Comment – 2015 Amendments**

147               Various statutes set forth where prepetition screenings are conducted, where  
148 petitions are filed, and which county is the county of financial responsibility. See Minn. Stat.  
149 § 253B.23, subd. 1b (2014). The committee determined the statute supersedes the second  
150 paragraph of Rule 6 and as such, the second paragraph of the former rule no longer serves a  
151 purpose.  
152

153               \* \* \*

154  
155       **Rule 8. Summons**

156  
157       Once a petition has been filed, the court shall issue a summons to be personally served  
158 upon the respondent. The summons shall direct the respondent to appear at the times and places  
159 stated in the summons for psychiatric, psychological, and medical examination and court  
160 hearing. The summons shall state in bold print that an order to apprehend and hold the  
161 respondent may be issued if the respondent does not appear as directed. The court need not issue  
162 a summons if the respondent is already under a medical or judicial hold.  
163

164       The court shall direct that a copy of the pre-petition screening report, the petition, and the  
165 examiner's supporting statement be personally served upon the respondent with the summons if  
166 issued, and that a copy be distributed or electronically transmitted through the E-Filing System to  
167 the petitioner, ~~the proposed patient~~, the respondent's patient's counsel, the county attorney, ~~and~~  
168 any person authorized by the respondent patient, and any other person as the court directs.  
169

170               \* \* \*

171  
172       **Rule 10. Attorney-Client Privilege**

173  
174       The content of attorney-client communications by telephone, mail, electronic means, or  
175 conference at the facility, shall not be monitored, censored, or made part of a respondent's  
176 medical record. The facility may open and inspect, but not read, a letter or package, and must do  
177 so in the respondent's presence.  
178

179               \* \* \*

180  
181       **Rule 12. Examiner Reports**

182  
183       Each court-appointed examiner shall examine the respondent and prepare and file with  
184 the court a separate report stating the examiner's opinion and the facts upon which the opinion is  
185 based. The report shall address:  
186

187 (a) Whether the respondent is mentally ill, developmentally disabled ~~mentally-retarded~~,  
188 chemically dependent, mentally ill and dangerous to the public, a sexually dangerous person, or a  
189 sexual psychopathic personality;

190 (b) Whether the examiner recommends commitment;

191 (c) The appropriate form, location, and conditions of treatment, including likelihood of  
192 the need for treatment with neuroleptic medication; and

193 (d) The respondent's capacity to make decisions about neuroleptic medication, if needed;  
194 and.

195  
196 (e) If the petition alleges that the respondent is mentally ill and dangerous to the public,  
197 the report shall also address whether there is a substantial likelihood that respondent will engage  
198 in acts capable of inflicting serious physical harm on another.

199  
200 (f) If the petition alleges that the respondent is a sexual psychopathic personality and/or a  
201 sexually dangerous person, the report shall address each element set out in Minn. Stat.  
202 § 253D.02, subs. 15 and 16, respectively, including an opinion as to the likelihood that the  
203 respondent will engage in future dangerous behavior.

204  
205 The court shall ~~send~~ distribute or electronically transmit through the E-Filing System a  
206 copy of the examiner's report to the county petitioner's attorney, the respondent, and  
207 respondent's attorney immediately upon receiving the report.

208  
209 \* \* \*

210  
211 **Rule 14. Location of Hearing, Rules of Decorum, Alternative Methods of Presenting**  
212 **Evidence**

213  
214 The judge or judicial officer shall assure the decorum and orderliness of any hearing held  
215 pursuant to Minn. Stat. ch. 253B or Minn. Stat. ch. 253D. The judge or judicial officer shall  
216 afford to respondent an opportunity to be dressed in conformity with the dignity of court  
217 appearances.

218  
219 A hearing may be conducted or an attorney for a party, a party, or a witness may appear  
220 by telephone, audiovisual, or other electronic means if the party intending to use electronic  
221 means notifies the other party or parties at least 24 hours in advance of the hearing and the court  
222 approves. If a witness will be testifying electronically, the notice must include the name, address,  
223 and telephone number where the witness may be reached in advance of the hearing. This rule  
224 does not supersede Minn. Stat. §§ 595.02 - ~~595.08~~ (competency and privilege). Respondent's  
225 counsel will be physically present with the respondent ~~patient~~. The court shall insure that the  
226 respondent has adequate opportunity to speak privately with counsel, including, where  
227 appropriate, suspension of the audio recording or allowing counsel to leave the conference table  
228 to communicate with the client in private.

229  
230 \* \* \*



**Rule 18. Recommitment**

For recommitments pursuant to Minn. Stat. § 253B.13, the court shall ~~append~~ reference the immediately preceding commitment file ~~to~~ in the file on the new petition.

**Rule 19. Termination of Early Intervention**

Any petition for involuntary commitment filed at the termination of court-ordered early intervention under Minn. Stat. § 253B.065, shall be treated as ~~an~~ a petition for initial commitment ~~petition and not a recommitment~~.

**Advisory Committee Comment – 2015 Amendments**

Rule 19 is amended for clarity only, and the amendment does not denote a change in law.

\* \* \*

**Rule 23. Evaluation and Final Hearings in Cases Governed by Minn. Stat. §§ 253B.18, 253B.185, and Minn. Stat. ch. 253D**

(a) For persons who have been committed as mentally ill and dangerous to the public, ~~sexually dangerous persons, or as sexual psychopathic personalities,~~ the head of the treatment facility shall file the report required by Minn. Stat. § 253B.18. The evaluation may be conducted at a secure treatment or at a correctional facility. If transport is needed, the court shall designate the agency responsible to do it.

(b) Prior to making the final determination with regard to a person initially committed as mentally ill and dangerous to the public, ~~as a sexually dangerous person, or as a sexual psychopathic personality,~~ the court shall hold a hearing. The head of the treatment facility, or his or her designee, shall file the report required by Minn. Stat. § 253B.18, subd. 2. The hearing for final determination shall be held within 14 days of the court's receipt of the report from the head of the treatment facility or within 90 days of the date of initial commitment, whichever is earlier, unless continued by agreement of the parties, or by the court for good cause shown. As its final determination, the court may, subject to Minn. R. Crim. P. 20.01, subd 4:

(1) Discharge the respondent's commitment;

(2) Commit the respondent as mentally ill only, in which case the respondent's commitment shall be deemed to have commenced upon the date of initial commitment, for purposes of determining the maximum length of the determinate commitment; or

(3) Commit the respondent for an indeterminate period as mentally ill and dangerous to the public, ~~as a sexually dangerous person, or as a sexual psychopathic personality.~~

(c) At the request of the respondent, the court shall appoint an examiner of the respondent's choice for purposes of the hearing required by this rule.

(d) The written report of the head of the treatment facility pursuant to Minn. Stat. § 253B.18, subd. 2, shall address the criteria for commitment and whether there has been any change in the respondent's condition since the commitment hearing. The report shall provide the following information:

- (1) the respondent's diagnosis;
- (2) the respondent's present condition and behavior;
- (3) the facts, if any, that establish that the respondent continues to satisfy the statutory requirements for commitment;
- (4) a description of treatment efforts and response to treatment by the respondent during hospitalization;
- (5) the respondent's prognosis;
- (6) the respondent's individual treatment plan;
- (7) an opinion as to whether the respondent is in need of further care and treatment;
- (8) an opinion as to the program or facility best able to provide further care and treatment, if needed;
- (9) an opinion as to whether respondent is dangerous to the public or himself. All supportive data and documentation shall be submitted with ~~attached to~~ the report.

(e) At the hearing, the court shall consider all competent evidence relevant to the respondent's present need for continued commitment. The burden of proof at the hearing is upon the proponent of indeterminate commitment to establish by clear and convincing evidence that the statutory requirements for commitment under Minn. Stat. ch. 253B or Minn. Stat. ch. 253D, continue to be met.

#### **Advisory Committee Comment – 2015**

Rule 23 is amended to conform to the statutory abrogation of the initial commitment period and review hearing for respondents committed as sexually dangerous persons and/or persons with a sexual psychopathic personality. All such commitments are now for an indeterminate period of time under Minn. Stat. § 253D.07, subd. 4. The amendment is not intended to modify or limit the rights of respondents committed under petitions filed prior to the statutory change of section 253B.18. See 2011 Minn. Laws ch. 102, art. 3, § 1 (effective May 28, 2011).

**Recommendation 2:**           **The committee recommends the expansion of Rule 13 to clarify the processes for electronic transfer and review of medical records.**

**Introduction**

Rule 13 currently allows access to medical records only to county attorneys, respondent's attorney, medical examiners, guardians ad litem, substitute decision-makers, and their agents and experts retained by case participants. The rules do not address the process for how medical records are submitted to the court by health care and medical records providers, nor is there a consistent process for how access to these records is provided to those authorized to review the records under Rule 13. The Second and Fourth Judicial Districts will be implementing a pilot project that will allow for the electronic transfer and storage of medical records relating to civil commitment cases. Under the pilot, health care and medical providers may transfer electronic medical records to a secure electronic portal, where authorized persons will have access to review the records. The transfer of medical records by health care and medical records providers to a secure environment will be voluntary; however, attorneys involved with civil commitment cases, medical examiners, and guardians ad litem will be required to access medical records through the electronic system, if health care and medical providers choose to use the system. The committee believes the rules should provide guidance for this new process. It is anticipated that the pilot districts will seek Supreme Court approval for the implementation of an electronic transfer of medical records from health care and medical records providers to the court.

**Specific Recommendation**

The committee recommends adoption of the following rule:

**Rule 13. Medical Records**

**(a) Medical Records – Defined.** For purposes of these rules, “medical records” are any records that relate to the past, present, or future physical or mental health or condition of an individual, including but not limited to medical history, examinations, diagnoses, and treatment.

**(b) Access to Respondent’s Medical Records.** The county attorney, respondent, respondent’s attorney, court-appointed examiner, guardian ad litem, substitute decision-maker, and their agents and experts retained for the proceeding shall have access to all of the respondent’s medical records and the reports of the court-appointed examiners. The records and reports may not be disclosed to any other person without court authorization or the respondent’s signed consent. Except for a preliminary hearing, each party shall disclose to the other party or parties ~~at least 24 hours~~ as soon as possible in advance of the hearing which of the respondent’s medical records the party intends to introduce at the hearing.

347 **(c) Electronic Transfer of Medical Records.** Health care and medical records providers  
348 may electronically transfer medical records to the court through the Electronic Medical Records  
349 System (“EMRS”) in cases located in the judicial districts authorized by order of the Minnesota  
350 Supreme Court and as designated by the State Court Administrator. Once medical records have  
351 been transferred or uploaded to the EMRS, the county attorney, respondent’s attorney, guardian  
352 ad litem, court-appointed examiners, and retained experts shall be entitled to access medical  
353 records only through the EMRS.

354  
355 **(d) Medical Records Subject to Voluntary Electronic Transfer.** Health care and  
356 medical records providers required by district court order to submit respondent’s medical records  
357 to the court may transmit all records to the court electronically through the EMRS in the judicial  
358 districts or portions thereof authorized and designated to participate. Before a health care or  
359 medical records provider may electronically transmit records through the EMRS, the provider  
360 must complete the registration process as established by the State Court Administrator. After  
361 completing the registration process, the health care or medical records provider may access the  
362 EMRS and electronically transmit records to the EMRS. Upon electronic receipt of any records  
363 from a provider through the EMRS, the EMRS shall transmit notice to the provider that records  
364 have been received.

365  
366 **(e) Voluntary Use by Providers.** Unless otherwise ordered by the district court, health  
367 care and medical records providers may submit medical records either electronically through the  
368 EMRS or by non-electronic, conventional means.

369  
370 **(f) Access to Electronic Medical Records.** The county attorney, respondent’s attorney,  
371 guardian ad litem, court-appointed examiners, and retained experts shall have access to  
372 respondent’s medical records through the EMRS. Prior to viewing or downloading any record in  
373 the EMRS, the county attorney, respondent’s attorney, guardian ad litem, court-appointed  
374 examiners, and retained experts must first complete the registration process, as established by the  
375 State Court Administrator. After completing the registration process, the county attorney,  
376 respondent’s attorney, guardian ad litem, court-appointed examiners, and retained experts shall  
377 access the EMRS and electronically view or download respondent’s records. The user accessing  
378 the records shall be responsible for maintaining the privacy and security of all records  
379 electronically viewed or downloaded. The county attorney, respondent’s attorney, guardian ad  
380 litem, court-appointed examiners, and retained experts shall periodically check the EMRS for  
381 record submissions.

382  
383 **(g) Period of Electronic Accessibility.** All medical records electronically transmitted to  
384 the court through the EMRS shall be electronically accessible by the county attorney,  
385 respondent’s attorney, guardian ad litem, court-appointed examiners, and retained experts

participating in the case for 30 days from electronic transmission or for a longer period as  
ordered by the court.

**Advisory Committee Comment – 2015**

Most of Rule 13 is new and provides for the implementation of, and express process for, the electronic transfer of medical records to the court through the Electronic Medical Records System (“EMRS”), when authorized and established by the Minnesota Supreme Court. The new provisions are intended to facilitate a pilot project for the electronic transfer of medical records by health care and medical records providers in cases in the Second and Fourth Judicial Districts, and are designed to be a model for the implementation of the electronic transfer of medical records if the pilot project is made permanent and statewide. The rule makes participation in the pilot project voluntary on the part of health care and medical records providers but, if those providers participate, mandatory for all attorneys, guardians ad litem, court-appointed examiners, and party-retained experts.

Rule 13(b) is language retained, substantially unchanged, from the former Rule 13. The only modification concerns the elimination of a specified timeframe for the disclosure of all medical records that parties intend to introduce at the hearing. The advisory committee believes that parties should continue to aspire to meet the former 24 hour deadline whenever possible, but recognizes that frequently, in practice, attorneys and parties do not receive respondent’s medical records until immediately before the hearing. Accordingly, the disclosures should be made as soon as possible after receiving the records.

The proposed amendments to Rule 13 are not intended to modify or limit the right of a respondent to request a protective order excluding from examiner review medical records which are not relevant and germane to the present mental and/or physical condition of the respondent in accordance with the procedures established in *In re D.M.C.*, 331 N.W.2d 236 (Minn. 1983).

**Recommendation 3:           The committee recommends that the rules should not allow remote access to civil commitment case records, not allow public access to medical records absent a court order, and not allow public access to civil commitment case records involving respondents who are minors.**

## **Introduction**

The committee devoted the bulk of its work to discussing the implications of allowing civil commitment case records to be electronically accessible to the public. Except as currently provided in Rules 13 and 21, and as limited by court order, civil commitment case records are public court records. The committee considered a broad range of perspectives, balancing the public interest in ensuring broad access to judicial-branch records, individual privacy interests, and potential public and individual safety concerns. The prospect of remote access to public court records is an encouraging and welcome development. The transition to a more electronic court environment is certain to shed greater light on the work of our courts and promote greater accountability for the judicial process. At the same time, the prospect of remote access to civil commitment court records raises serious concerns.

## **Remote Access to Civil Commitment Case Records**

Civil commitment proceedings involve inquiry into highly sensitive matters. As a result, civil commitment records often contain private information regarding a respondent's psychological and medical condition and history, and sometimes, information about victims or alleged victims of criminal acts, including acts of sexual assault. Making psychological, medical, and victim information publicly accessible over the Internet has the potential for unintended consequences to respondents and others involved with commitment proceedings that could undermine the purpose of these proceedings, which is to provide treatment while ensuring public safety. In light of the potential for harm to privacy interests and the personal security of individuals involved in civil commitment proceedings, the committee recommends that access to civil commitment proceedings be limited to that available at a courthouse. This approach is endorsed by the advisory committee on the Rules of Public Access to Records of the Judicial Branch.

## **Access to Medical Records**

Under the current Rules of Public Access, medical records admitted into evidence are publicly accessible, but pursuant to court policy, hearing and trial exhibits are not scanned or electronically accessible to the public. A member of the public must come to the courthouse where the court file is located and request access to view exhibits. Before allowing public access to exhibits, court staff must review and redact all confidential information, which is time consuming given the voluminous nature of most medical records. Medical records introduced into evidence contain a great deal of information that is not relevant to the public's interest in the case. There was further concern by committee members with relying on the filing parties to redact the voluminous irrelevant details in medical records (i.e., past unrelated medical

treatment) submitted into evidence and members did not want to overburden court staff with having to review and redact before providing public access.

Based on these concerns, the committee considered whether medical records are of such a unique and exceedingly sensitive nature that, even when introduced as an exhibit at a hearing or trial, the confidentiality of the actual record should be preserved. Because medical records received into evidence at a hearing or trial frequently contain a large amount of historical and extraneous medical and psychological information that is highly sensitive or not relevant to the underlying commitment proceedings, the committee recommends that medical records retain their confidential status even after received into evidence. The committee concluded that the provision in Rule 21(b) permitting the parties to discuss the contents of medical records in oral/written argument or to elicit testimony regarding the same at a hearing or trial has the effect of publicly divulging enough information to satisfy the public need for safety and oversight. Moreover, the court's findings in commitment cases are ordinarily very detailed, thus allowing the public to understand the factual bases for any individual commitment decision from the publicly accessible order.

#### Civil Commitments of Minors

The committee discussed whether the transition to electronic court records and the Judicial Branch's effort to make court records electronically accessible to the public requires reconsideration of the public access classification of civil commitment proceedings involving minor respondents. The collateral consequences of public accessibility to civil commitment records can have long-term impacts on respondents and adversely impact treatment. In the case of minors, the impacts can be profound and last a lifetime. Like juvenile delinquency proceedings, (a confidential case type), where the focus is on rehabilitating the juvenile's behavior, the focus and fundamental purpose of civil commitment proceedings is treatment. Because the focus and fundamental objective is the same in both case types, both case types should receive the same public access classification.

The committee carefully considered maintaining the existing public case type classification for mentally ill and dangerous, sexual psychopathic personality, and sexually dangerous person commitments involving minors. Court policy requires that all documents filed in a confidential case type must have the same security level or higher as the case type. As proposed by this committee, a petition for commitment of a minor as mentally ill would be treated as a confidential document because the case type for minors committed as mentally ill will be confidential. If a commitment involving a minor as a mentally ill and dangerous, sexual psychopathic personality, or sexually dangerous person were treated as a public case type, the petition would be classified as public. Because a petition often alleges multiple commitment grounds, and because the burden on court administration staff in ensuring proper document classification would be significant, the committee determined that a blanket confidential case type classification for all civil commitment proceedings involving minor respondents is desirable. To satisfy the public need for safety and oversight, and upon thorough consideration and discussion of the relevant issues, the committee recommends that Rule 21(e) be amended to classify all civil commitment case records involving minor respondents as not accessible to the public absent a court order or other directive of the Minnesota Supreme Court or its designee.

\* \* \*

508 **Specific Recommendation**

509  
510 The committee recommends the adoption of the following rule:

511  
512  
513 **Rule 21. Public Access to Records**

514  
515 (a) Except as provided in these Special Rules, the Rules of Public Access to the Records  
516 of the Judicial Branch, or ~~and~~ as limited by court order, all court files relating to civil  
517 commitment shall be available to the public for inspection, copying, printing, or downloading  
518 release.

519 (b) ~~The court administrator shall create a separate section or file in which the pre-petition~~  
520 ~~screening report, court-appointed examiner's report, and all medical records~~ filed with or  
521 received by the court. ~~Records in that section or file shall not be disclosed to the public except~~  
522 ~~by express order of the district court. This provision shall not limit the parties' the ability of any~~  
523 ~~party, witness, or the court to mention the contents of the pre-petition screening report,~~  
524 ~~court-appointed examiner's report, and medical records in open court or in otherwise publicly~~  
525 ~~accessible pleadings or documents the course of proceedings under Minn. Stat., chapter 253B or~~  
526 ~~Minn. Stat. ch. 253D. Any reference at a public hearing or in an otherwise-public document to~~  
527 ~~confidential reports or medical records shall not render the reports or medical records available~~  
528 ~~to the public, or create a sufficient basis for making the reports or records available to the public.~~

529  
530 (c) Where electronic filing is authorized or required under Minnesota General Rule of  
531 Practice 14, the pre-petition screening report, court-appointed examiner's report, and all medical  
532 records filed with the court must be designated as confidential by the filing party. Upon  
533 discovery by court administration staff that any pre-petition screening reports, court-appointed  
534 examiner reports, or medical records have not been designated as confidential by the filing party,  
535 the court administrator shall designate the document as confidential and notify the filer of the  
536 change in designation.

537  
538 (d) The court may, sua sponte, or upon motion and hearing, issue an order prohibiting  
539 public access to civil commitment case records that are otherwise accessible to the public only if  
540 the court finds that exceptional circumstances exists.

541  
542 (e) Except when authorized by order of the presiding judge or the Minnesota Supreme  
543 Court, there shall be no public access to case records of proceedings seeking commitment of a  
544 minor. The petition for commitment of a minor must be designated as confidential by the filing  
545 party. Upon discovery by court administration staff that the petition for the civil commitment of  
546 a minor has not been designated as confidential by the filing party, court administration staff  
547 shall designate the petition as confidential and notify the filer of the change in designation.

548  
549 **Advisory Committee Comment – 2015**

550 This rule is amended to clarify public access issues with civil commitment  
551 case records. Generally, civil commitment case records are publicly accessible.  
552 Rule 4, subdivision 2, of the Rules of Public Access sets forth the procedures for  
553 when a court may restrict access to public case records.  
554



555 Rule 21(b) is amended to remove the requirement for the court  
556 administrator to maintain confidential documents in a separate section or file as this  
557 requirement is no longer applicable with electronic records. As authorized by these  
558 rules and Rule 8, subdivision 5(b) of the Rules of Public Access to Records of the  
559 Judicial Branch, all medical records, whether submitted to the court or admitted into  
560 evidence, are confidential and shall not be accessible to the public except by express  
561 order of the district court. Rule 21(c) establishes the duty of the filing party to  
562 properly classify medical records as confidential when filed in the E-Filing System.  
563 Medical records introduced and admitted into evidence during a hearing remain  
564 confidential even if referenced at a public hearing or in an otherwise public  
565 document.  
566

567 There may be times when otherwise-public documents should be kept  
568 confidential and Rule 21(d) reminds court users that an order restricting public  
569 access may be requested by motion or may issue upon the court's own initiative.  
570 However, an order granting such relief must include specific findings that support  
571 the order granting the request. Pursuant to Minnesota General Rules of Practice  
572 14.06, a Registered User electronically filing a document that is not accessible to the  
573 public is responsible for designating that document as confidential in the E-Filing  
574 System at the time of filing. A Registered User is defined in Minnesota General  
575 Rules of Practice 14.01.  
576

577 The Rules of Public Access to Records of the Judicial Branch clarify that  
578 civil commitment case records are publicly accessible at courthouses, to ensure that  
579 court administration can ensure confidentiality is preserved when appropriate.  
580 Rule 21(e) contains provisions intended to satisfy the public need for safety and  
581 oversight, while safeguarding the privacy interests of minors who may become or  
582 who are civilly committed. The collateral consequences of public accessibility to  
583 civil commitment records can have long-term impact on minor respondents and  
584 adversely impact treatment. Rule 21(e) clarifies that case records of any civil  
585 commitment of a minor respondent shall not be publicly accessible absent a district  
586 court order or order or directive of the Minnesota Supreme Court or its designee.  
587  
588

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8050

OFFICE OF  
APPELLATE COURTS

JAN 01 2015

**FILED**

**ORDER REGARDING PROPOSED AMENDMENTS  
TO THE RULES OF PUBLIC ACCESS TO RECORDS  
OF THE JUDICIAL BRANCH**

The Minnesota Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch has recommended amendments to the Rules of Public Access to Records of the Judicial Branch to address public access to court records in light of the judicial branch's increased use of electronic case records. The Committee's recommendations and proposed amendments draw upon recommendations made by other advisory committees regarding access to electronic records, including the Advisory Committee for the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure and the Advisory Committee for the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act. The court has reviewed the proposed amendments and is fully advised in the premises.

**IT IS HEREBY ORDERED THAT:**

1. Any person or organization wishing to provide written comments in support of or opposition to the proposed amendments to the Minnesota Rules of Public Access to Records of the Judicial Branch shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr.

Blvd., Saint Paul, Minnesota 55155. The written comments shall be filed so as to be received no later than March 2, 2015.

2. A hearing will be held before this court to consider the proposed amendments to the Minnesota Rules of Public Access to Records of the Judicial Branch. The hearing will take place in Courtroom 300, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota, on March 17, 2015, at 11:00 a.m.

3. Any person or organization desiring to make an oral presentation at the hearing in support of or in opposition to the proposed amendments to the Minnesota Rules of Public Access to Records of the Judicial Branch, or to recommendations for rule amendments related to access to judicial branch records that have been separately proposed by the court's Advisory Committees on the Rules of Civil Procedure, the Rules of General Practice, the Criminal Rules of Procedure, the Rules of Juvenile Delinquency Procedure, the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure, or the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act, shall file one copy of a written request to so appear, along with one copy of the material to be presented, with AnnMarie O'Neill, Clerk of Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. The request to appear and written materials shall be filed with the Clerk of Appellate Courts so as to be received no later than March 2, 2015.

4. A copy of the committee's report and the proposed amendments to Rules of Public Access to Records of the Judicial Branch is attached to this Order. Copies of the

reports and recommendations filed by the court's other advisory committees can be accessed on P-MACS, the public access site for case records of the Minnesota appellate courts, as follows:

**ADM04-8001** *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the Rules of Civil Procedure* (filed Dec. 23, 2014).

**ADM09-8009** *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the General Rules of Practice* (filed Dec. 23, 2014).

**ADM10-8049** *Report and Proposed Amendments to the Minnesota Rules of Criminal Procedure* (filed Dec. 19, 2014).

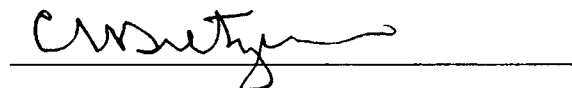
**ADM10-8003** *Report and Proposed Amendments to the Minnesota Rules of Juvenile Delinquency Procedure* (filed Dec. 19, 2014).

**ADM10-8041** *Final Report of the Advisory Committee on the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure* (filed Dec. 29, 2014).

**ADM10-8046** *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act* (filed Dec. 23, 2014).

Dated: January 2, 2015

BY THE COURT:

A handwritten signature in black ink, appearing to read "C. Dietzen", is written over a horizontal line.

Christopher J. Dietzen  
Associate Justice